

1 HON. JAMES L. ROBART  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ALEXANDRA CARR, an individual, on her own behalf, on behalf of THE KAISER ALUMINUM FABRICATED PRODUCTS LLC MEDICAL CHOICE PLUS HOURLY ACTIVE UNION PLAN, and on behalf of similarly situated individuals,

Plaintiff,

v.

UNITED HEALTHCARE SERVICES, INC., a Delaware corporation.

Defendant.

NO. 2:15-cv-1105-JLR

[PROPOSED] ORDER:

- (1) FINALLY APPROVING SETTLEMENT AGREEMENT;
- (2) APPROVING DISBURSEMENTS PURSUANT TO SETTLEMENT AGREEMENT;
- (3) APPROVING PAYMENT OF COST OF CLAIMS ADMINISTRATION AND CLASS NOTICE, LITIGATION COSTS, CASE CONTRIBUTION AWARD AND ATTORNEYS' FEES; AND
- (4) ORDERING FINAL REPORT.

NOTED FOR HEARING:

June 2, 2017 at 9:00 a.m.

I. BACKGROUND

On February 10, 2017, the Court preliminarily approved a proposed Settlement Agreement between plaintiff on behalf of the class and defendant United Healthcare Services, Inc. Dkt. No. 77. In conjunction with that Order, the Court directed that the Claims Processor mail the Class Notice (Dkt. No. 73-2) to the Class Notice Recipients and provide the Court with confirmation of compliance by March 22, 2017. See Dkt. No. 78

ORDER FINALLY APPROVING SETTLEMENT AGREEMENT, ATTORNEYS' FEES, LITIGATION COSTS AND INCENTIVE AWARD - 1  
[Case No. 2:15-cv-01105-JLR]

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1 (confirming mailing of Class Notice). Class counsel also established a settlement webpage  
2 consistent with the Preliminary Approval Order, containing the Class Notice, the Claim  
3 Form Materials and key filings in the litigation, including the Motion for Attorneys' Fees,  
4 Litigation Costs and Incentive Awards. See <http://www.symslaw.com/uhcsettlement/>  
5 (last visited 4/24/17).

6 The Preliminary Approval Order also provided that class members who wished  
7 to comment on or object to the proposed Agreement to do so by April 21, 2017. Class  
8 members were informed of their rights and of this deadline in the notices that were  
9 mailed to them and on class counsel's website.

10 The Order further scheduled a final settlement hearing, which was held on June 2,  
11 2017 at 9:00 a.m., to consider any objections and comments submitted by class members  
12 and to determine whether the proposed Agreement is fair, reasonable, adequate and  
13 should be approved by the Court.

14 **II. FINDINGS**

15 1. The parties have reached a Settlement Agreement that confirms plan  
16 amendment to prospectively cover medically necessary mental health services without  
17 special treatment limitations imposed only on mental health services. The Agreement  
18 also established a process for re-processing of mental health claims denied or limited  
19 due to the application of the Challenged Mental Health Treatment limitations, the exact  
20 terms of which are set out in the Agreement.

21 2. The Agreement also establishes a settlement fund to pay all reprocessed  
22 claims. Under the terms of the Agreement, this fund will be used to pay for re-processed  
23 claims only.

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1       3. Under the terms of the Settlement Agreement, the costs of claims  
2 administration, class notice, litigation costs, case contribution award and attorneys fees  
3 shall be paid from a payment of \$110,000 from defendant UHC to class counsel.

4       4. The Court's Preliminary Approval Order required the Claim Processor to  
5 mail court-approved notice to class members by direct mail. The notices informed class  
6 members that they had an opportunity to object or submit comments to the Court  
7 regarding the proposed Agreement and that they must do so in writing by April 21, 2017.

8       5. Consistent with the Order, defendant provided notices and materials  
9 required under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715(b).

10      6. Class Notices were mailed to all identified settlement class members. No  
11 class members objected to the Settlement Agreement. No class members submitted  
12 comments.

### 13                   III. CONCLUSIONS

14      7. Rule 23(e) provides that "a class action shall not be dismissed or  
15 compromised without the approval of the court...." Compromise and arbitration of  
16 complex litigation is encourage and favored by public policy. *See Simula, Inc. v. Autoliv,*  
17 *Inc.*, 175 F.3d 716, 719 (9th Cir. 1999).

18      8. A presumption of fairness and adequacy attaches to a class action  
19 settlement reached in arm's-length negotiations by experienced class counsel after  
20 meaningful discovery. *See, e.g., Officers for Justice v. Civil Service Com.*, 688 F.2d 615, 625  
21 (9th Cir. 1982); *Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 209, 35 P.3d 351  
22 (2001).

23      9. The following factors are generally considered when determining whether  
24 a settlement is fair, adequate and reasonable: the likelihood of success by plaintiff; the  
25 amount of discovery or evidence; the settlement terms and conditions; recommendation

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1 and experience of counsel; future expense and likely duration of litigation;  
2 recommendation of neutral parties, if any; number of objectors and nature of objections;  
3 and the presence of good faith and absence of collusion. *Officers for Justice*, 688 F.2d at  
4 625.

5 10. Based upon these factors, the Court finds that the Agreement is fair,  
6 reasonable, and in the best interests of the class. The requirement of CR 23 and due  
7 process have been satisfied.

8 11. Specifically, the Court concludes that the Agreement was the result of  
9 arm's-length bargaining. It was reached after sufficient discovery and motions practice.  
10 Although the plaintiff believed that she had a strong likelihood of success, defendant  
11 also believed that it would ultimately succeed, such that there was risk in proceeding  
12 with the litigation. A settlement that confirms coverage of medically necessary mental  
13 health services without special limitations and exclusions, and provides for full  
14 reimbursement (except for a \$15 co-payment) for class members' past mental health  
15 therapy services, achieves the goals of the litigation. There is no evidence of collusion  
16 between the parties, and the agreement was reached in good faith.

17 12. The class was provided with adequate notice, and due process has been  
18 satisfied in connection with the distribution of the notice. As noted above, there were  
19 no objections or comments to the proposed Agreement.

20 **IV. FUNDING OF QUALIFIED SETTLEMENT FUND**

21 13. Upon the occurrence of the conditions set forth in section 2 of the  
22 Settlement Agreement, and after adequate funding of the Qualified Settlement Fund by  
23 defendant, the Court authorizes the Claims Processor to disburse all Reprocessed Claim  
24 Amounts to settlement class members from the Qualified Settlement Fund.

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1           **V. CLASS NOTICE, CLAIMS ADMINISTRATION, LITIGATION COSTS,  
2 INCENTIVE AWARDS AND ATTORNEYS' FEES**

3       14. The Settlement Agreement provides, upon the occurrence of the conditions  
4 set forth in Section 2 of the Agreement, that class counsel shall make the following  
5 payments out of \$110,000 to be paid by defendant UHC to class counsel: (1) payment  
6 for Class Notice and Claims Administration; (2) payment of all litigation costs;  
7 (3) payment of up to \$5,000 for a case contribution award to plaintiff Carr, if approved  
8 by the Court, and (4) the remainder to be paid to class counsel, Sirianni Youtz  
9 Spoonemore Hamburger and Breskin, Johnson & Townsend, as payment for lodestar  
10 attorneys' fees. That request is reasonable and is granted. The Court awards \$110,000  
11 to be paid by UHC to class counsel within 30 days of the Effective Date of the Settlement  
12 Agreement. Class counsel shall then distribute the payments identified above.

13       15. No objections were received to the request for a payment of up to \$110,000  
14 in attorneys fees.

15           **VI. CASE CONTRIBUTION AWARDS**

16       16. Upon the occurrence of the conditions set forth in Section 2 of the  
17 Settlement Agreement, plaintiff Carr is awarded a case contribution award in the sum of  
18 \$5,000 as described in the Settlement Agreement. The Court authorizes the  
19 disbursement of these funds from the \$110,000 payment to class counsel.

20       17. No objections were received to the request for case contribution awards.

21           **VII. CLASS COUNSEL'S FINAL REPORT**

22       18. Class counsel shall submit a final report to the Court regarding claims  
23 processing and disbursement of funds by no later than 30 days after the Claims Processor  
24 processes all valid claims. The Report shall detail the payment of court-awarded  
25 attorneys' fees, costs, expenses, case contribution award, costs of notice/administration,  
26 payment of class member claims, and taxes, if any.

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## VIII. ORDER

It is hereby ORDERED that:

1. The Settlement Agreement is approved as fair, reasonable and adequate under CR 23, and its terms shall bind class members, since no class member opted-out.

2. Class counsel is awarded \$110,000 out of which it must pay for the costs of Class Notice and claims processing, litigation costs, the Court-approved case contribution award and, with the remainder, attorneys fees.

3. The Claims Processor is also authorized to distribute payments to class members and the named plaintiff in accordance with the Agreement and this Order.

These amounts are authorized to be paid from the Settlement Trust Fund.

4. Case contribution award of \$5,000 to plaintiff Alexandra Carr, as set forth in the Agreement, is approved. Class counsel is authorized to distribute that sum from the \$110,000 payment to Class counsel, as described above and in the Settlement Agreement.

5. Class counsel is ordered to submit a Final Report in accordance with the Agreement and this Order, detailing all payments made by class counsel from the \$110,000 payment and from the Qualified Settlement Fund.

6. The Court shall retain jurisdiction over this matter until the Qualified Settlement Fund is closed.

It is so ORDERED this 2<sup>nd</sup> day of June, 2017.

JAMES L. ROBART  
United States District Judge

**ORDER FINALLY APPROVING SETTLEMENT  
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1 Presented by:

2 SIRIANNI YOUTZ  
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4 /s/ Eleanor Hamburger

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16 Class Counsel

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## **CERTIFICATE OF SERVICE**

I hereby certify that on April 28, 2017, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

- **Barbara J Duffy**  
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  - **Eleanor Hamburger**  
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DATED: April 28, 2017, at Seattle, Washington.

s/ Eleanor Hamburger

Eleanor Hamburger (WSBA #26478)

**ORDER FINALLY APPROVING SETTLEMENT  
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